

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations  
2 State of California  
BY: DAVID L. GURLEY (Bar No. 194298)  
455 Golden Gate Ave., 9<sup>th</sup> Floor  
3 San Francisco, CA 94102  
Telephone: (415) 703-4863

4 Attorney for the Labor Commissioner

5  
6 BEFORE THE LABOR COMMISSIONER  
7 OF THE STATE OF CALIFORNIA  
8  
9

10 NATALIE HINDS p/k/a MACY GRAY, ) Case No. TAC 18-00  
11 )  
Petitioner, )  
12 vs. ) DETERMINATION OF  
13 ) CONTROVERSY  
14 )  
LORI LEVE, d/b/a LORI LEVE )  
15 MANAGEMENT, )  
Respondents. )

16  
17 INTRODUCTION

18 The above-captioned petition was filed on June 20, 2000,  
19 by NATALIE HINDS p/k/a "MACY GRAY", (hereinafter Petitioner, or  
20 "GRAY"), alleging that LORI LEVE dba LORI LEVE MANAGEMENT,  
21 (hereinafter Respondent or "LEVE"), acted as an unlicensed talent  
22 agency in violation of §1700.5<sup>1</sup> of the California Labor Code.  
23 Petitioner seeks a determination voiding *ab initio* the management  
24 agreement entered into between the parties, and requests  
25 disgorgement of all sums respondent earned for purported management

26  
27 <sup>1</sup> All statutory citations will refer to the California Labor Code unless  
28 otherwise specified.

1 services.

2 Respondent filed her answer with this agency on August 1,  
3 2000, maintaining various affirmative defenses including, *inter*  
4 *alia*, lack of jurisdiction, statute of limitations, estoppel and  
5 waiver. A hearing was scheduled before the undersigned attorney,  
6 specially designated by the Labor Commissioner to hear this matter.  
7 The hearing commenced on January 31, 2001, in Los Angeles,  
8 California. Petitioner was represented by Stephen D. Rothschild of  
9 King, Purtich, Holmes, Paterno & Berliner, LLP; respondent appeared  
10 through her attorney Henry D. Gradstein of Gradstein, Luskin & Van  
11 Dalsem. Due consideration having been given to the testimony,  
12 documentary evidence, arguments and briefs presented, the Labor  
13 Commissioner adopts the following Determination of Controversy.

14  
15 FINDINGS OF FACT

16 1. In January of 1998, Macy Gray was searching for a  
17 personal manager to guide her suddenly flourishing musical career.  
18 Gray was introduced to Leve in January of 1998 and soon thereafter  
19 Gray accepted Leve's proposal to act as her personal manager,  
20 albeit on a six-month trial basis. Under the terms of the oral  
21 contract for Leve's personal services, Leve would be compensated by  
22 15% of Gray's earnings, 7 1/2% paid directly to Leve and the  
23 remaining 7 1/2% placed in a trust account for Gray's benefit. If  
24 at the end of the six month period, the parties mutually agreed  
25 that the relationship would continue, the monies held in the trust  
26 account would be transferred to Leve.

27 2. On July 30, 1998, Leve wrote Gray's transactional  
28 attorney, Jill Berliner, asserting her perceived new position as

1 Gray's "official" manager, seeking the contents of the trust  
2 account. On September 10, 1998, Ms. Berliner transferred the  
3 amounts held in trust to Leve who then received her entire 15%  
4 commission directly thereafter.

5           3. The gravamen of petitioner's claim include two  
6 engagements allegedly procured by Leve during the initial six-month  
7 probationary period. On February 16, 1998, Gray performed an  
8 engagement at the Los Angeles nightclub *Luna Park*. This  
9 performance was created by the respondent. Leve contacted the  
10 owner of the club, her friend, and requested whether she could  
11 utilize the club in order to "showcase<sup>2</sup>" her new client for the  
12 purpose of securing a recording contract. Leve invited various  
13 executives from several record companies hoping Gray's live  
14 performance would arouse interest and prompt a record deal. That  
15 is exactly what occurred. As a direct result of the *Luna Park*  
16 showcase, Gray signed with Epic records in or around April of 1998.  
17 Gray did not receive compensation from *Luna Park* and consequently,  
18 Leve did not receive a commission. It was determined through  
19 credible testimony of both parties that the sole purpose of this  
20 event was to secure a recording contract.

21           4. The second engagement allegedly procured by the  
22 respondent included a June 28, 1998 performance at a small venue  
23 named *The Mint*. Gray had performed at *The Mint* several times and  
24 in the past booked her own engagements with Jed the owner of the  
25 club. The president of Epic Records, Gray's new label, thought a

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26           <sup>2</sup> To "showcase" an artist, contemplates a live performance intended to  
27 accomplish a specific desired result. The performance is not for immediate  
28 profit, but rather for a deferred benefit, i.e., publicity, securing a recording  
contract, seeking a talent agent and/or a myriad of other purposes.

1 showcase displaying Gray's musical talents for the executives at  
2 Epic was a good idea. The respondent and petitioner both testified  
3 that the intent behind *The Mint* showcase was not only to display  
4 Gray's talents, but moreover to attract a talent agent. In pursuit  
5 of that goal, Leve invited Epic executives, Gray's transactional  
6 team and scores of agents from various high profile music industry  
7 talent agencies. The show accomplished the desired result and Gray  
8 was signed by Mitch Rose of CAA the next day.

9           5. In preparation for *The Mint* showcase, Leve contacted  
10 Jed and discussed the date and time of the show, audio concerns,  
11 and questioned Jed about *The Mint's* ticket policy. This discussion  
12 revealed that Gray would be required to sell a minimum of five  
13 tickets at \$5.00 a piece and the band would then receive \$4.00 of  
14 every ticket sold after the initial five. Leve conveyed the ticket  
15 policy to Gray, who immediately accepted. *The Mint's* maximum  
16 occupancy was 125 persons. The show was sold out and Gray received  
17 \$665.00 in compensation. Leve received a \$99.76 commission for  
18 this event.

19           6. In April of 1998, Gray began recording her album,  
20 "On How Life Is". Consequently, Gray expended her creative energy  
21 to the production of the album and thought minimally about her  
22 representation. Gray testified that during the production of the  
23 album she received a call from Leve after the six-month  
24 probationary period. Gray maintained she wasn't sure whether she  
25 wanted to continue the relationship with Leve and instead wanted to  
26 focus on completing the album. Gray did not terminate the  
27 relationship, and conversely allowed the relationship to continue  
28 under the same terms, except Leve was now receiving a 15%

1 commission directly. When Leve attempted to have the terms and  
2 conditions of the relationship memorialized in an October 2, 1998  
3 letter, petitioner did not accept, reject or counter Leve's written  
4 proposal. Gray testified in October of 1998, she began to  
5 experience concern over whether she wanted to continue with Leve as  
6 her manager. Gray testified that Leve didn't get along with the  
7 band and according to Gray, Leve didn't participate in some of the  
8 creative aspects normally associated with the duties of a manager.

9  
10 7. On November 16, 1998, Gray terminated Leve. Soon  
11 thereafter, Gray discontinued commission payments to Leve and has  
12 since failed to remit commission payments for the sales of "On How  
13 Life Is", which to date has sold over six million copies. On  
14 September 1, 1999, Leve filed suit in the Los Angeles Superior  
15 Court against Gray for breach of contract and unjust enrichment,  
16 Case No. BC 216122. That case is stayed pending the determination  
17 of this petition.

#### 18 CONCLUSIONS OF LAW

19  
20  
21 1. The primary issue is whether based on the evidence  
22 presented at this hearing, did the respondent operate as a "talent  
23 agency" within the meaning of Labor Code §1700.4(a). Specifically,  
24 has the Respondent acted as an unlicensed talent agency by  
25 procuring the *Luna Park* or *The Mint* engagements? Labor Code  
26 §1700.4(a) defines "talent agency" as:

27 "a person or corporation who engages

1 in the occupation of procuring,  
2 offering, promising, or attempting  
3 to procure employment or engagements  
4 for an artist or artists, except  
5 that the activities of procuring,  
6 offering, or promising to procure  
7 recording contracts for an artist  
8 shall not of itself subject a  
9 person...to regulation and licensing  
10 under this chapter."

11  
12 2. The parties stipulated that the petitioner is an  
13 "artist" within the meaning of Labor Code §1700.4(b), and that the  
14 respondent has never held a talent agency license.  
15

#### 16 LUNA PARK

17 3. It was clearly established that the intent behind  
18 the *Luna Park* showcase was to procure a recording contract for  
19 Gray. In furtherance of that intent, Leve invited a host of label  
20 executives. Leve surmised that when record companies witnessed  
21 Gray's live performance, they would assuredly offer her a deal. As  
22 a direct result of the showcase, Epic Records did.

23 4. Labor Code §1700.4(a) exempts from licensing  
24 requirements the activities of procuring, offering, or promising to  
25 procure recording contracts for an artist. Notably, the  
26 legislature did not include an "attempt" to procure a recording  
27 contact as an exemption from licensure. This would have created  
28 the exception that swallowed the rule. Creative artist's  
representatives, as in Park v. Deftones, *infra.*, could always  
argue that unlicensed activity was in furtherance of procuring a  
recording contract. "Attempt" as defined in *Black's Law Dictionary*  
5<sup>th</sup> Edition means, "an intent combined with an act falling short of

1 the thing intended." Here, the attempt did not fall short of the  
2 desired result, and instead materialized into a recording contract.  
3 This showcase was no longer an attempt to secure a recording  
4 contract when the recording contract was ultimately procured. To  
5 "procure" means "to get possession of: obtain, acquire, to cause to  
6 happen or be done; bring about." *Webster's New International*  
7 *Dict.*, at p. 1809. The sole purpose for this performance was to  
8 procure a record deal. That is what occurred, and in this case,  
9 the end justifies the means. The respondent's efforts in creating  
10 this engagement was an activity to procure a recording contract.  
11 Consequently, the procurement of this engagement does not require  
12 a license.

13           5. The petitioner cites Park v. Deftones 71 Cal.App.4th  
14 1465, which stands for the proposition that a manager who procured  
15 more than eighty (80) engagements over several years, and did not  
16 take a commission for his involvement was still subject to the  
17 Act's licensing requirements. Like Leve, Park argued that securing  
18 these performances were attempts to secure a recording contract.  
19 The Park court disregarded that argument and held the purpose of  
20 the Act is remedial, and its aim goes beyond regulating the amount  
21 of fees which can be charged for booking acts. For example, an  
22 agent must have his form of contract approved by the Labor  
23 Commissioner, maintain his client's funds in a trust fund account,  
24 record and retain certain information about his client, and refrain  
25 from giving false information to an artist concerning potential  
26 employment. Because the Act is remedial, it should be liberally  
27 construed to promote its general object. The abuses at which these  
28 requirements are aimed apply equally where the personal manager

1 procures work for the artist without a commission, but rather for  
2 the deferred benefits from obtaining a recording contract. Park v.  
3 Deftones supra, at 1471, 1472.

4           6. Deftones is distinguishable in several respects.  
5 First, it is preposterous to embrace Park's argument that more than  
6 eighty (80) performances were procured solely for the purpose of  
7 securing a record deal. As discussed, 80 performances procured by  
8 an artist's representative is precisely the conduct the legislature  
9 intended to regulate. Here, evidenced by the invited guests and  
10 irrefutable testimony of both parties, the sole intent of the *Luna*  
11 *Park* engagement was to secure a record contract, which was  
12 accomplished. This was a one shot performance. The concerns  
13 addressed in Park, were simply not present here.

14           7. Secondly, the Deftones performances were clearly  
15 employment. Gray's unpaid "showcase" cannot be considered  
16 employment. Bloomberg v. Butler Labor Commissioner Case No. TAC  
17 31-94, states, "[t]he term 'employment', if it is to have any  
18 logical meaning within the context used in the Act, implies payment  
19 for the services rendered." Moreover, Leve satisfied a primary  
20 responsibility to her unsigned musical artist, by creating a record  
21 deal enabling Gray to concentrate on her artistic endeavors.  
22 Consequently, the *Luna Park* performance was not the procurement of  
23 employment or an engagement for an artist within the meaning of the  
24 Act because this engagement did not present any issues and/or  
25 concerns contemplated by the legislature when drafting the  
26 protective mechanisms of the Act. Even, *arguendo*, if *Luna Park* was  
27 considered the procurement of an engagement for an artist, this  
28 engagement was the procurement of a recording contract and is thus



1 exempt from a licensing requirement. This holding does not create  
2 a blanket exemption for all "showcases" attempting to secure a  
3 recording contract. Each alleged engagement must be scrutinized on  
4 a case by case basis. Here, the intent of the parties, coupled  
5 with the invited guests and ultimate outcome, clearly established  
6 the sole purpose for this event and demonstrated to the hearing  
7 officer that the procurement of this event was not the type of  
8 engagement requiring a license.

#### 10 THE MINT

11 8. In addition to securing a recording contract on  
12 behalf of an artist, the primary duties of a manager are, "[i]n  
13 essence ... advising, counseling, directing and coordinating the  
14 artist in the development of the artist's career. The manager's  
15 task encompasses matters of both business and personal  
16 significance. ... The manager also serves as a liaison between the  
17 artist and other personal representatives, arranging their  
18 interactions with, and transactions on behalf of, the artist... By  
19 orchestrating and monitoring the many aspects of the artist's  
20 personal and business life, the personal manager gives the artist  
21 time to be an artist. That is, managers liberate artists from  
22 burdensome yet essential business and logistical concerns so that  
23 artists have the requisite freedom to discharge their artistic  
24 function and to concentrate on their immediate creative task ....  
25 In this regard, the personal manager is an indispensable element of  
26 an artist's career." Waisbren v. peppercorn 41 Cal.App.4th 246, 252  
27 citing, *O'Brien, Regulation of Attorneys Under California's Talent*  
28 *Agencies Act: a Tautological Approach to Protecting Artists* (1992)

1 80 Cal.L.Rev. 471, 481-483.

2 9. Leve's job was to alleviate Gray's logistical  
3 representative concerns. To accomplish that, Gray required a  
4 licensed talent agent. And that is what Leve did. After Leve  
5 secured Gray's recording contract, Gray was free to concentrate on  
6 her art, producing her highly celebrated and successful album "On  
7 How Life Is". Throughout this time period, Leve did not procure  
8 employment for Gray. Instead, she concentrated on securing Gray a  
9 competent licensed talent agent, necessary for any future  
10 performances, personal appearances or concert tours associated with  
11 the album. In pursuit of this goal, Leve again created another  
12 "showcase" intended to display Gray's capabilities. This time the  
13 "showcase" was created for talent agents. Again, Leve envisioned  
14 agents scampering to represent Gray after viewing her live  
15 performance.

16 10. The method was similar to that of Luna Park. The  
17 issue is whether the compensation received by Leve for her  
18 participation in procuring *The Mint*, or the fact that an engagement  
19 procured for the intended result of securing a talent agent, which  
20 is not exempted within the Act, requires a talent agency license.

21 11. The \$98.00 received by Leve for this one-time show  
22 was simply fortuitous. On the one hand, "we recognize the  
23 legislature intended to cover those who are compensated for their  
24 procurement activities." Waisbren supra pg. 254. While on the  
25 other, we do not believe the existence of compensation is  
26 dispositive of whether procurement requires licensure. Again, the  
27 guest list was provided, disclosing talent agents and Epic  
28 employees. The intent of this show was adequately established

1 through documentary evidence and the testimony of **both** parties.  
2 Gray needed an agent and that is what she received, stemming  
3 directly from Leve's conduct. The Labor Commissioner cannot in  
4 good conscience punish a manager for being an unlicensed talent  
5 agent for coordinating an event created for the purpose of securing  
6 a licensed talent agent.

7           12. Waisbren establishes "[t]he clear object of the  
8 Talent Agencies Act is to prevent improper persons from becoming  
9 talent agents and to regulate such activity for the protection of  
10 the public." Waisbren, at 261 *supra*. Leve acted in good faith, is  
11 not an improper person and does not require regulation for the  
12 protection of the public. Her actions [*The Mint*] were conducted  
13 not for the purpose of evading or avoiding the Act, but to comply  
14 with it. Leve did her job. She obtained a recording contract and  
15 acquired an agent. And she did so in the most expeditious and  
16 effective way possible. She highlighted her client's talents  
17 through a live performance. The legislature surely did not intend  
18 to prohibit a manager from serving her client in this fashion.

19           13. This is not a radical departure, as some might  
20 argue, from the historical holdings of the Labor Commissioner. The  
21 facts of this case are unique and the holding is fact specific. As  
22 discussed, this determination does not conflict with Deftones, nor  
23 does it conflict with Waisbren. Waisbren negotiated deals on  
24 behalf of Peppercorn for regional television commercials and home  
25 video projects as well as a Dick Clark Productions pilot.  
26 Waisbren, *supra* pg. 251. Leve's involvement with the two  
27 performances do not encroach upon illegal procurement as  
28 demonstrated in these Second District Court of Appeals decisions.

1           14.     In Buchwald, "The court, or as here, the labor  
2 commissioner, is free to search out illegality lying behind the  
3 form in which a transaction has been cast for the purpose of  
4 concealing such illegality. 'The court will look through  
5 provisions, valid on their face, and with the aid of parol  
6 evidence, determine that the contract is actually illegal or is  
7 part of an illegal transaction.' " Buchwald v. Superior Court 254  
8 Cal.App.2d at p. 355. Try as we might, we do not discern an  
9 illegal transaction on behalf of Leve.

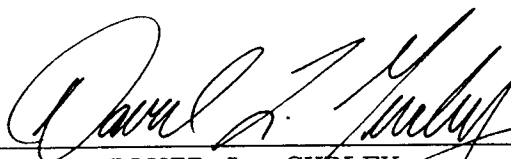
10           15.     The Labor Commissioner cannot encourage activities  
11 that fall on the periphery of illegal conduct, so we must be clear  
12 in stating that Leve's activities **under this specific fact pattern,**  
13 **coupled with this specific evidence** do not trigger the Act. If any  
14 agreement procured by an unlicensed agent are reasonably calculated  
15 to lead to a future performance, engagement or employment, then  
16 those actions must be liberally construed to trigger the Act and  
17 suppress the mischief at which it is directed. Buchwald, supra.

18  
19                               ORDER

20           For the above-stated reasons, IT IS HEREBY ORDERED that  
21 the 1998 contract between Petitioner, NATALIE HINDS p/k/a MACY GRAY  
22 and respondent LORI LEVE dba LORI LEVE MANAGEMENT is neither  
23 illegal, nor invalid, nor unenforceable. Therefore, the petition  
24 of HINDS is denied.

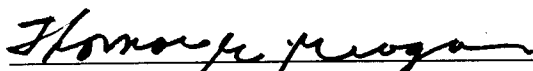
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Dated: July 13, 2001

  
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DAVID L. GURLEY  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: JUL 13 2001

  
\_\_\_\_\_  
TOM GROGAN  
Deputy Chief

1  
2 STATE OF CALIFORNIA  
3 DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

4 CERTIFICATION OF SERVICE BY MAIL  
5 (C.C.P. §1013a)

6 NATALIE HINDS, PKA MACY GRAY VS. LORI LEVE DBA LORI LEVE  
7 MANAGEMENT  
8 SF 0018-00 TAC 18-00

9 I, Benjamin Chang, do hereby certify that I am employed in  
10 the county of San Francisco, over 18 years of age, not a party to  
11 the within action, and that I am employed at and my business  
12 address is 455 Golden Gate Avenue, 9<sup>th</sup> Floor, San Francisco, CA  
13 94102.

14 On July 13, 2001, I served the following document:

15 **DETERMINATION OF CONTROVERSY**

16 by facsimile and by placing a true copy thereof in envelope(s)  
17 addressed as follows:

18 HOWARD E. KING, ESQ.  
19 STEPHEN D. ROTHSCHILD, ESQ.  
20 KING, PURTICH, HOLMES,  
21 PATERNO & BERLINER, LLP  
22 1900 AVENUE OF THE STARS, 25<sup>TH</sup> FLOOR  
23 LOS ANGELES, CA 90067-4506

24 HENRY D. GRADSTEIN, ESQ.  
25 GRADSTEIN, LUSKIN & VAN DALSEM  
26 12100 WILSHIRE BLVD., STE 350  
27 LOS ANGELES, CA 90025-7103

28 and then sealing the envelope with postage thereon fully prepaid,  
depositing it in the United States mail in the city and county of  
San Francisco by ordinary first-class mail.

I certify under penalty of perjury that the foregoing is  
true and correct. Executed on July 13, 2001, at San Francisco,  
California.

  
BENJAMIN CHANG